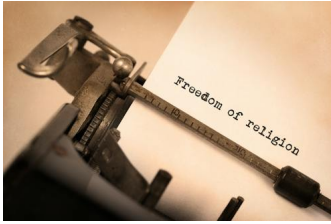


The great divide where religious beliefs and the law meet

Written by Michael Quinlan, Dean, School of Law Sydney, University of Notre Dame Australia



Faith is accommodated In Australia, but there is piecemeal protection for religious freedom. shutterstock

In a nation that is increasingly secular, religion still plays a vital role in the way we run our country. In [this series](#) , we examine the role of religion in Australian politics and education.

Australia is a multi-faith society. The [2016 Census](#) shows that, while the mix of beliefs has changed over the years, Australia remains a pretty religious place.

In the last census, nearly 70% of Australians self-identified as religious. The number of Australians who have [self-identified as Christian](#) in the census has fallen from 88.2% in 1966 to 52.1% in 2016.

The number of Australians identifying as being of another religion has grown from 0.8% to 8.2%, with Islam (2.6%), Buddhism (2.4%) and Hinduism (1.9%) being the largest non-Christian faiths.

The number who self-identified in the category of “no religion” has grown from 0.8% to 30.1%. This category includes having secular beliefs, other spiritual beliefs or having no religion. This makes it hard to be sure what these Australians believe.

Indigenous cultural beliefs were ignored

Australian history shows the benefits of accommodating differing beliefs. We have done that very poorly with our Aboriginal peoples. Their high rates of incarceration, poor education and ill-health no doubt reflect that failure.

Even contemporary calls for marriage equality ignore the lack of recognition of any Indigenous

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cultural marriages under the [Marriage Act](#) .

The poor start continued with governors, from Arthur Phillip on, [swearing allegiance](#) to “the Protestant succession” and expressly repudiating “Romish beliefs in the transubstantiation of the Eucharist”.

As the Protestant/Catholic [sectarianism](#) that plagued Australia’s history into the 1970s shows us, it can take time for people with different beliefs to learn how to live well with each other. Smaller groups tend to be treated with suspicion, if not hostility, until they are better understood and excel on the battlefields, in sport, in politics and in business. This is the history of Australia.

We can be proud of the progress made and of some of the steps taken in contemporary Australia to help people work and live with their religious faith in particular circumstances. Think of:

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NRL team Canterbury-Bankstown’s employment contract with Will Hopoate which enabled him to not play rugby league on Sundays to accommodate his faith. He has now decided that he will [play on Sundays](#) , which is his choice to make;

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the Australian Cricket Board and advertisers agreeing that Usman Khawaja, a cricketer of Islamic faith, need not wear [advertisements for alcohol](#) ;

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the freedom of conscience that politicians, when dealing with issues such as abortion and euthanasia (and for at least one more year in relation to marriage), are granted in the Labor Party and in the Liberal Party – theoretically, at least – on all issues;

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the exemption under electoral laws for people whose beliefs prevent them from voting on particular days or at all;

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exemptions for religious bodies from [discrimination laws](#) to enable them to operate schools and ordain clergy in compliance with their own doctrines; and

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the contents of religious confessions being protected from disclosure in court by statute in Commonwealth law and by the laws of most states and territories in order to protect the confidentiality of the confessing believer.

More by common sense than law

These all show good ways in which we accommodate faith but they also show a piecemeal protection for religious freedom. To the extent to which we enjoy religious freedom, it is more by the good sense of everyday Australians than by the law.

While Australia has committed to a number of [international instruments](#) recognising the importance of [freedom of religion](#), there is in no general Commonwealth religious anti-discrimination legislation.

There are [Commonwealth laws](#) prohibiting discrimination in a range of areas such as age, race, sex and sexual identity but not religion.

As a result, freedom of conscience and belief is not treated with the importance our history and international law call for and state and territory laws regularly override religious freedom.

When the courts are asked to intervene

Australian parliaments regularly pass laws without sufficient protections for religious freedom. It is common for Australian courts and human rights officials, when having to decide between protecting religious freedom and any other claim, to decline to protect religious freedom.

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By way of example, Archbishop Porteous of Hobart was subject to an [anti-discrimination claim](#) for distributing a booklet explaining traditional Catholic teaching on marriage. Although ultimately discontinued, the court action was not dismissed as trivial or lacking foundation at the outset.

And Christian Youth Camps (CYC), owned by the Christian Brethren, was [successfully sued](#) for discrimination in Victoria for politely declining a booking of its camping site by an organisation for rural gay and lesbian youth.

The CYC declined the booking because it did not wish its premises to be used in the promotion to young people of a view of sexual morality at odds with the Christian Brethren faith.

In 2013, a Victorian Catholic pro-life doctor was [investigated and disciplined](#) for refusing to refer a patient seeking a sex-selection abortion under a Victorian law requiring doctors with a conscientious objection to abortion to [provide a referral](#) to a doctor known not to share their objection. Similar laws apply in the Northern Territory and New South Wales.

And three Christians were [successfully prosecuted](#) in Tasmania for protesting too close to an abortion clinic.

In that state, the ACT, the Northern Territory, and Victoria – with other states considering similar laws – prayer, counselling and protest (no matter how quiet, respectful or caring) is not allowed within designated areas around abortion clinics.

Religion is not going away. Our laws can do a better job of accommodating people of faith. Our history demands no less.

Read other articles in the series [here](#).

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<http://www.uns.edu.au/academic/religious-beliefs-and-the-law>